

## REMARKS

Claims 1-5, 7, 9-11, 14, 16, and 19-23 are pending in the present application. Claims 2 and 4 have been cancelled without prejudice, and Claims 1, 3, 10, 19, 20, and 23 have been amended without prejudice, leaving Claims 1, 3, 5, 7, 9-11, 14, 16, and 19-23 for consideration upon entry of the present Amendment. Claim 1 has been amended to incorporate the limitations of Claims 2 and 4, and to correct a typographical error. The remaining claims have been amended to correct a typographical error and/or to make the appropriate changes in claim dependency in light of the amendment made to Claim 1. As support for the amendments is found in the claims and specification as originally filed, no new matter has been included in the amended claims. Reconsideration and allowance of the claims is respectfully requested in view of the following remarks.

### Claim Objections

Claims 1, 10, and 23 are objected to because of the use of the term "fist" rather than "first" when referencing the first terminal. Claims 1, 10, and 23 have been amended to correct the typographical error. As such, Applicant respectfully requests reconsideration and withdrawal of this objection.

### Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, 7, 9, and 16 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,237,233 to Cloutier et al. ("Cloutier"). Applicant has cancelled Claim 2 thereby making this claim rejection moot, and respectfully traverses this rejection with respect to the remaining claims.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient, Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

Claim 1 has been amended to incorporate the limitations of Claim 4, which sets forth in part tabs. The Examiner has acknowledged that Cloutier does not teach the tabs as set forth in Claim 4. Accordingly, Cloutier cannot anticipate Claim 1 or those claims

dependent therefrom. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 1, 3, 7, and 9.

Claim 16 depends from Claim 10, and, therefore, includes all of the limitations of Claim 10. Accordingly, in order to anticipate Claim 16, Cloutier must, at the very least, teach or suggest all of the elements set forth in Claim 10.

Claim 10 sets forth an assembly comprising a jamb, a first level, and a second level. The first level abuts a top horizontal side of the jamb, a first vertical side of the jamb, and a second vertical side of the jamb. The second level is located at a bottom surface of the jamb and abuts the first and second vertical sides of the jamb. Accordingly, Claim 10 sets forth an assembly comprising a jamb, a first level having *three sides* and disposed on a top portion of the jamb, and a second level having three sides and disposed on a bottom portion of the jamb.

Cloutier teaches a single door frame adjustment apparatus that is *four-sided*. Abstract. Referring to Figure 8, Cloutier teaches that each of the two vertical sides of the continuous four-sided apparatus abuts a respective vertical side of a door frame unit and the top horizontal side of the apparatus abuts a top horizontal side of the door frame unit. Unlike, Applicant's claimed invention which teaches two distinct levels each having three sides, Cloutier teaches only one level, which is four-sided and which is attachable to the door frame unit.

Claims 21 and 22 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 1,101,517 to Ahlvin ("Ahlvin"). Applicant respectfully traverses these claim rejections.

Claims 21 and 22 set forth a level comprising a slotted assembly, wherein the slotted assembly secures the level to the jamb and allows for the continuous adjustment of the jamb even *after the jamb is installed to the wall*, wherein the continuous adjustment may occur until the jamb is level and plumb with the wall. Accordingly, the adjustment elements of Claims 21 and 22 assist in leveling and plumbing the level with the wall even after the level is installed to the wall. This differs from the clamps taught

in Ahlvin, wherein Ahlvin's clamps serve to draw the jamb closely into contact with the edges of the squaring device *prior to* positioning the jamb into the wall. As Ahlvin does not teach a slotted assembly that allows for the continuous adjustment of the jamb once the jamb is attached to the wall, it does not teach all of the elements of Claims 21 and 22, and, therefore, does not anticipate these claims.

Additionally, Claim 22 sets forth a slotted assembly comprising an adjustor element that is slidably engaged with a slot, wherein the adjustor element can be loosened to allow a tab to be slidably moved across a vertical component of the level, a vertical side of a jamb, and across an adjacent area of a wall to which the jamb is installed. This differs from the clamp taught in Ahlvin in that a short bar 7 does not move across the wall to which the jamb is installed.

Rather, referring to Figures 1 and 7, Ahlvin teaches a clamp 3 comprising a short bar 7 having its outer end turned rearward to provide a frame-engaging flange 7a. Flange 7a abuts an outer side of vertical bar 2, but does not extend onto or otherwise make contact with studding wall C. Accordingly, as flange 7a does not extend onto wall C, it does not teach or suggest a tab that is slidably moved across the vertical component, the vertical side of a jamb, *and* across an adjacent area of wall to which the jamb is installed. As not all of the elements of Claim 22 are taught or suggested by Ahlvin, Ahlvin cannot anticipate these claims. Applicant, therefore, respectfully requests reconsideration and withdrawal of this rejection.

#### Claim Rejections Under 35 U.S.C. § 103(a)

Claims 4, 10, 11, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cloutier in view of Ahlvin. More particularly, the Examiner argues that Ahlvin teaches a plurality of adjustable tabs 3 on a vertical element for the purpose of attaching a framing device within a frame. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598

(Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A 1970).

With regards to Claims 4 and 19, wherein the limitations of Claim 4 have been incorporated into Claim 1, the Examiner has acknowledged that Cloutier does not teach or suggest the tabs as claimed. Applicant submits that Ahlvin does not cure this deficiency. That is, Ahlvin does not teach or suggest a tab that is slidably moved across a vertical component of the level, a vertical side of a jamb, *and* across an adjacent area of wall to which the jamb is installed. Rather, Ahlvin teaches a flange 7a that abuts an outer side of a vertical bar 2, wherein the flange 7a does not extend to a studding wall C.

As neither Cloutier nor Ahlvin teach or suggest all of the elements set forth in Claim 1, a prima facie case of obviousness has not been established with regards to Claims 1 and 19. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

With regards to Claims 10, 11, and 20, these claims set forth an assembly comprising two levels, wherein the first level is attached to the upper portion of a jamb and the second level is attached to the lower portion of a jamb. Neither Cloutier nor Ahlvin teach the use of two levels to level and plumb.

Additionally, Claims 10, 11, and 20 set forth a tab, wherein the tab can be slid across a vertical component of the level, a vertical side of the jamb, and across an adjacent area of a wall to which the jamb is installed. As previously discussed, neither Ahlvin nor Cloutier, either alone or in combination, teach a tab that can move across an adjacent area of the wall to which the jamb is installed. As not all of the elements of these claims is taught or suggested by Cloutier and Ahlvin, a prima facie case of obviousness has not been established for these claims. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Additionally, with regards to Claims 19 and 20, both of these claims set forth a securing element disposed in the slot of the adjustor element, wherein the securing

element bores through the wall to which the level and jamb are mounted to further secure the level and the jamb to the wall. Ahlvin does not teach or suggest a securing element that is disposed in the slot of the adjustor element which bores into the wall. Rather, referring to Figure 7, Ahlvin teaches a screw 13 that bores into vertical bar 2 and a screw 9 that also bores into vertical bar 2. Furthermore, unlike Applicant's claimed invention, no part of Ahlvin's clamp 3 comes into contact with studding wall C; accordingly, there can be no part of clamp 3 that bears into the wall. As such, neither Cloutier nor Ahlvin teach or suggest all of the elements of Claims 19 and 20. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cloutier in view of U.S. Patent No. 6,530,186 to Torstensen ("Torstensen"). Applicant respectfully traverses this rejection. Claim 5 depends from Claim 1, which has been amended to incorporate the limitations of Claim 4. As the Examiner has acknowledged that Claim 4 is not taught or suggested by Cloutier, and as the Examiner has not cited Torstensen as teaching the limitations of Claim 4, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cloutier and Ahlvin and further in view of Torstensen. More specifically, the Examiner argues that Torstensen teaches how attaching means 26 can be used for attaching a framing apparatus to a door jamb. Applicant respectfully traverses this rejection. Claim 14 depends from Claim 10, and therefore, includes all of the limitations of Claim 10. As previously discussed herein, neither Cloutier nor Ahlvin teach or suggest all of the limitations of Claim 10, nor does the Examiner allege that Torstensen cures this deficiency. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Ahlvin in view of Cloutier. More particularly, the Examiner argues that Cloutier disclosed how two overlying members can join with an adjustor means 9 as an alternative means to render the horizontal component of a framing device adjustable. Applicant

respectfully traverses this rejection. Claim 23 depends from Claim 21, and therefore, includes all of the limitations of Claim 21. As previously discussed herein, Ahlvin does not teach or suggest all of the limitations of Claim 21, nor does the Examiner allege that Cloutier cures this deficiency. Applicant, therefore, respectfully requests reconsideration and withdrawal of this rejection.

In light of the foregoing remarks, reconsideration by the Examiner is respectfully requested. It is believed that the foregoing remarks fully comply with the Final Office Action and that the claims herein should now be allowable to Applicant.

Respectfully submitted,

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